

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALAN BACA,

Plaintiff,

v.

No: 1:21-cv-384

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF VALENCIA,
COUNTY OF VALENCIA,
VALENCIA COUNTY SHERIFF'S DEPARTMENT,
VALENCIA COUNTY DETENTION CENTER,
VALENCIA MANAGER'S OFFICE,
CUSTODIAN OF PUBLIC RECORDS,
ANGIE WOMACK, DANNY MONETTE,
RANDY GUTIERREZ, OFFICER
ZAMORA, WARDEN CHAVEZ, MAJOR GUITERREZ,
CAPTAIN GARCIA, CAPTAIN TRUJILLO,
CAPTAIN BARELA, SERGEANT VAISA,
SERGEANT TENA, SERGEANT SANDOVAL,
SERGEANT GONZALES, OFFICER JOJOLA,
OFFICER SAIS, OFFICER HOLGUIN,
OFFICER GALINDO, OFFICER SOTO,
OFFICER HOBBS, OFFICER LAZOYA,
OFFICER V ALLARDEZ, OFFICER NAVARRO, OFFICER CRISPIN,
OFFICER HENSON, OFFICER BROUNDA,
OFFICER BORUNDA, OFFICER CASTILLO,
OFFICER ROBINSON, OFFICER ARMIJO,
OFFICER ORTIZ, OFFICER DURAN, OFFICER CASTILLO,
OFFICER ORTIZ, OFFICER BARRERAS,
OFFICER ALFERO, OFFICER PEREA,
OFFICER MARTINEZ, OFFICER ESPINDOLA,
OFFICER ESPODOLA, OFFICER GONZALES,
OFFICER OTERO, OFFICER ROMERO, OFFICER GOMEZ,
DANIEL TRUJILLO, OFFICER ANTHONY OTERO
and "JOHN DOES",**

Defendants.

NOTICE OF REMOVAL

Defendants The Board of County Commissioners of the County of Valencia, County of
Valencia, Valencia County Sheriff's Department, Valencia County Detention Center, and Valencia

Manager's Office¹, by and through counsel, the New Mexico Association of Counties (Brandon Huss and David Roman), state the following for their Notice of Removal:

1. Pursuant to 28 U.S.C. §§ 1331, 1441, 1443, and 1446, Defendant The Board of County Commissioners of the County of Valencia exercises its right to remove this action from the Thirteenth Judicial District Court, County of Valencia, State of New Mexico, where the case is now pending by the name and style of *Alan Baca v. The Board of County Commissioners of the County of Valencia, et al.*, Thirteenth Judicial District Court No. D-1314-CV-2021-00147. Plaintiff's action, upon information and belief, arises out of alleged violations of the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.
2. This Court has original jurisdiction as provided in 28 U.S.C. § 1331 in that the cause arises under the Constitution and laws of the United States brought pursuant to 42 U.S.C. § 1983.
3. On February 19, 2021, Plaintiff filed his Complaint for Excessive Use of Force, Assault and Battery, Intentional Spoliation of Evidence, Negligent Spoliation of Evidence, and Violation of Constitutional Rights with the Thirteenth Judicial District Court. A Court-endorsed copy of the Complaint is attached hereto as **Exhibit A**. This Court has original jurisdiction as provided in 28 U.S.C. § 1331 in that the cause arises under the Constitution and laws of the United States brought pursuant to 42 U.S.C. § 1983.
4. Defendant Board of County Commissioners of the County of Valencia, was purportedly served with process in this matter on March 25, 2021.

County of Valencia, Valencia County Sheriff's Department, Valencia County Detention Center, and Valencia Manager's Office are not viable defendants under NMSA § 41-46-1 and Federal Rule 17 therefore, they should be dismissed with prejudice.

5. Upon information and belief, no named defendant has been properly served. A review of the state court docket indicates that Plaintiff claims to have served various individual defendants by mailing summonses to the County. However, neither Federal Rule 4 nor New Mexico Rule 1-004 allow service by mail to an individual defendant's potential place of employment; thus, the service is invalid and the returns of service should be stricken from the record. Further, as many of the individual defendants are named only by their title and surname, their identities are unknown and they the legal equivalent of Doe defendants, which are not allowed under the circumstances at bar.
6. This Court has original jurisdiction as provided in 28 U.S.C. § 1331 in that the cause arises under the Constitution and laws of the United States brought pursuant to 42 U.S.C. § 1983.
7. Pursuant to the requirements of 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the Thirteenth Judicial District Court, County of Valencia, State of New Mexico. Defendants attach, and incorporate by reference, copies of the following documents served on Defendants in this action:
 - A. Demand for Six (6) Person Jury (Exhibit B);
 - B. Summons Returns (Exhibit C);and
 - C. Copy of the NMCourts.com lookup page (Exhibit D).
8. Defendant The Board of County Commissioners of the County of Valencia desires and is entitled to have this cause removed from the Thirteenth Judicial District Court, County of Valencia, State of New Mexico.
9. Written notice of the filing of this Notice is being sent contemporaneously to Plaintiff as required by law.

10. A true and accurate copy of this notice will be filed with the clerk of the Thirteenth Judicial District Court, County of Valencia, State of New Mexico, as required by law.

Respectfully submitted,

NEW MEXICO ASSOCIATION OF COUNTIES

/s/ Brandon Huss

BRANDON HUSS

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*Attorneys for The Board of County Commissioners
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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2021, I filed the foregoing pleading electronically through the CM/ECF system, which caused all counsel of record to be served electronically, as more fully reflected on the Notice of Electronic Filing.

/s/ Brandon Huss

BRANDON HUSS